83 - 2022

No.



# In the United States Supreme Court

**October Term, 1984**

LARRY E. GRIBBLE, *Petitioner - Pro Se*

vs.

JAMES W. BUCKNER, et al., *Respondents*

Petition for Writ of Certiorari
To the Sixth Circuit Court of Appeals

LARRY GRIBBLE
*Petitioner, Pro Se*
Route 4 - Box 440
McMinnville, TN 37110
(615) 934-2826

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## QUESTIONS PRESENTED FOR REVIEW

I. Did the Court of Appeals properly apply tolling rules to the statute of limitations as this court has instructed and is done by other circuits?

II. Did the Sixth Circuit Court of Appeals properly raise, by *sua sponte* assertion, and properly apply the defenses of *res judicata* and *collateral estoppel*.

III. Does the complaint state a cause of action upon which relief can be granted?

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## PARTIES

Honorable James W. Buckner, Judge
General Sessions Court of Rutherford County, Tennessee

Robert Goodwin, Former Sheriff
Rutherford County, Tennessee

Craig Snell, (Deceased) Former Sheriff
Rutherford County, Tennessee[1]

Randy Galloway, Former Deputy Sheriff
Chief Investigator for Rutherford County Attorney General's Office (Presently)[2]
Rutherford County, Tennessee

Larry Washington Carlton, Special Deputy[3]
Rutherford County, Tennessee

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1. Petitioner has heard and read in the media that Sheriff Craig Snell is deceased. There has been no notification or entry into the record of this case by the administrator of the deceased in compliance with 28 U.S.C. Fed. Rules of Civ. Pro. Rule 25(a) (1).

2. Respondent Galloway was acting under color of law v.i.a. deputy sheriff of Rutherford County, Tennessee at the initiation of these causes of action. During the period between April 10, 1974 and November 20, 1981 respondent Galloway's employment was changed to chief investigator for the Attorney General's Office of Rutherford and Cannon Counties, Tennessee.

3. Respondent Carlton who was entrusted with the storage of the seized property was found guilty by entrance of a plea of guilty to four counts of receiving and concealing stolen property and sale of a controlled substance on one count. Respondent Carlton was denied a suspended sentence and sentenced to three years confinement on December 19, 1979. Petitioner again, at this point, requested return of his property and was denied such. At this request respondent Buckner informed petitioner that he would see that petitioner never gets the property returned to him.

Respondent Galloway and respondent Carlton were, at the time of the seizure, brothers-in-law.

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## OPINIONS BELOW

1. *Memorandum and Order,* United States District Court for the Middle District of Tennessee, Nashville Division; Filed January 17, 1983 by the Honorable John T. Nixon, District Judge. (*Appendix* A2, A3)

2. *Order,* United States Court of Appeals for the Sixth Circuit; Filed November 29, 1983. (*Appendix* A4, A5, A6)

3. *Order,* (denial of *PETITION FOR REHEARING*), United States Court of Appeals for the Sixth Circuit; Filed February 10, 1984. (*Appendix* A7, A8)

4. *Order,* (denial of petitioner's *MOTION TO CORRECT ERRONEOUS CONCLUSIONS OF MATERIAL FACTS AND TO AMEND ORDER ACCORDINGLY),* United States Court of Appeals for the Sixth Circuit; Filed April 4, 1984. (*Appendix* A9, A10, A11, A12)

## JURISDICTION

Jurisdiction is conferred upon this court by 28 U.S.C. § 1254(1).

This petition seeks to review an order issued by the Sixth Circuit Court of Appeals on November 29, 1983.

This petition also seeks review of an order denying a petition for rehearing issued on February 10, 1984.

Further, this petition seeks to review an order denying petitioner's motion to correct erroneous conclusions of material facts and amend order accordingly. This motion was denied on April 4, 1984.

## CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment XIV, Section I.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and the State wherein they reside. No state shall make or enforce any law which shall abridge the priviledges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

42 U.S.C. § 1983

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, priviledges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."
(R.S. § 1979; Pub. L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.)

## STATEMENT OF THE CASE

On April 10, 1974, and on the 2 or 3 days immediately preceeding, petitioner's farm and barns were warrantlessly searched. On April 10, 1974 a group of livestock was warrantlessly seized and impounded. This search had been instigated in response to a complaint by the L & N Railroad who has a track running down by the side of petitioner's rented farm. The L & N train had run over a cow and killed her near the property of the petitioner. The cow that was killed was a Holstein and the livestock seized were Charolais cows and Tennessee Walking Horse broodmares and colts.

It was later determined and established in court that the cow that was killed did not belong to petitioner but to another neighboring farmer.

Petitioner was charged with three misdemeanor warrants pertaining to mistreatment of livestock and allowing them to run at large. Petitioner was arrested,

posted bond, and a preliminary hearing was set. After posting the required bond, petitioner contacted his attorney in attempt to gain his assistance in photographing the seized livestock but was denied access to see or photograph his livestock for evidentiary purposes. Defendants' attorney and veterinarian were, however, allowed to photograph the livestock.

A preliminary hearing was held on the criminal warrants and petitioner was bound over to the Rutherford County Grand Jury and indicted on all three warrants. The charges were subsequently nolled at the requests of the State. See, *In Re Carlton*, 26 B.R. 202, 204, (Bankruptcy, M.D. Tenn. 1982).[4]

Petitioner, throughout all the above procedures, had requested that the court return his livestock after it was established that the cow that had been killed was not the property of the petitioner and the charges were *nolled*. These requests were refused and an alternative request that respondent Carlton be required to post bond for performance of his duty as bailee was also refused.

Respondent Carlton, subsequently, sued petitioner for storage and board of the livestock. Petitioner filed a cross-complaint and was awarded a verdict of $48,500.00 for lost profits, negligence, and breach of a bailment contract. A remittur was ordered reducing the verdict to $42,100.00 because the jury had not been instructed as to punative damages. See, *In Re Carlton*, supra, 204.

Petitioner made several efforts to secure the return of his property, through the Rutherford County Courts but was denied a possessory hearing, except for one more which petitioner had sold. See, *In Re*

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4. *In Re Carlton*, 26 B.R. 202, (Bankruptcy M.D. Tenn. 1982) is the official report of the bankruptcy proceedings mentioned in the complaint at paragraph 7.

*Carlton*, supra, 206 which states, "In fact, both Gribble (petitioner) and his brother made several efforts to obtain these animals from the debtor (respondent Carlton)." (emphasis supplied).

Petitioner, in 1981, attached an automobile pursuant to the judgment obtained in 1977. The automobile was advertised for sale and respondent Carlton filed a voluntary chapter 7 bankruptcy petition prior to the sale of the automobile. In a deposition on November 20, 1981 preparing for the *In Re Carlton*, supra, proceeding; respondent testified that he had sold the livestock in 1975. (Respondent Carlton testified at the hearing in 1977 that he still had the livestock in his possession.)

From information obtained in the bankruptcy deposition on November 20, 1981 this civil rights suit was filed on November 19, 1982 in Federal District Court for the Middle District of Tennessee. Service was returned on each defendant through the United States Marshal's Office. Jurisdiction in the court of origin was conferred by 28 U.S.C. § 1343 (3). Neither jurisdiction nor service of process was either contested or denied.

Respondents, on January 10, 1982, filed a motion for "an extension of time of thirty (30) days from December 14, 1982, up to and including January 12, 1983, within which to answer the complaint filed against them for the reason that such time is necessary to investigate the allegations in the complaint in order to appropriately answer." *(Appendix*, A-17). No answer was ever filed. Instead, respondents on December 30, 1982 filed a *MOTION TO DISMISS* alleging two grounds for dismissal:

> "1. The statute of limitations has run and bars the plaintiff's recovery.
>
> 2. The unlawful detention of ones chattels is not the sort of wrong to which the Civil Rights Act is applicable."

(*Appendix*, A-18)

A *MEMORANDUM AND ORDER* granted this motion was entered on January 17, 1983. (*See Appendix* A2, A3)

A *Notice of Appeal* was filed in district court and an appeal was taken to the Sixth Circuit Court of Appeals. Timely briefs were filed by both parties. Respondent in their *BRIEF OF DEFENDANTS-APPELLEES*, filed on June 17, 1983 waived the second ground of their dismissal stating:

> "I. THE DEFENDANT WILL ADMIT THAT THE DEPRIVATION OF A PROPERTY RIGHT IS ACTIONABLE PURSUANT TO 42. U.S.C.A. § 1983 and 28 U.S.C.A. § 1343 (3)." (See BRIEF OF DEFENDANTS-APPELLEES, p.p. 4, 5, 6 filed in the appellate court.) (This is reproduced in the *Appendix at* A19, A20)

*The Appellate Court affirmed the order of dismissal on November 29, 1983. The appellate court, in its Order* of November 29, 1983 addressed only the statute of limitations question which was the only issue remaining before the appellate court since the other ground of the motion to dismiss in the district court had been waived.

Petitioner filed a petition for rehearing re-directing the attention of the appellate court to grounds for tolling that were alleged in the complaint (deceitful concealment, continuing nature of the cause of action, conspiracy, and the *custodia legis* status of the property). None of these issues were addressed in the order of the appellate court granting the motion to dismiss except the concealment issue. Petitioner in his petition for a rehearing, re-asserted these issues to the appellate court and directed the court's attention especially to the fact that: (1) Tennessee tolling rules toll status of limitations when property is in *custodia*

*legis,* and (2) The appellate court and the defendants had both recognized that the property was, in fact, in *custodia legis* and the appellate court had recognized that there was a concealment.

In their denial of the petition for a rehearing, the appellate court *inferred* that the statute of limitations might be tolled and changed their grounds for dismissal, *sua sponte,* now dismissing the complaint on grounds that: (1) the cause of action was *res judicata,* (2) the petitioner's case was dismissed on the doctrine of *collateral estoppel,* and (3) indicated that the respondents may have previously tendered accord and satisfaction.

Petitioner, upon receiving the order denying the petition for rehearing, filed a motion in the appellate court for a correction of errors that the court had made in erroneously determining conclusions of material fact. It is the petitioner's position, that the appellate court *sua sponte* made erroneous conclusion from which they asserted their second affirming of the motion to dismiss.

However, on April 4, 1984 the appellate court entered an order denying the petitioner any of the requested relief and failed to correct any of the erroneous conclusions of material fact from which they formulated their opinion. Additionally, in the Order of April 4, 1984, the appellate court entered its fourth, *sua sponte,* grounds for dismissal: the complaint failed to state a cause of action because the petitioner had not pleaded in his complaint that the State of Tennessee provides no remedy for the actions complained of and that Tennessee provides a common law conversion remedy for which plaintiff can redress his civil rights complaint in Tennessee State Courts. The appellate court gave as authority for this holding *Parrat* v. *Taylor,* 451 U.S. 527 (1981) and *Vicory* v. *Walton,* 721 F.2d 1062, 1064 - 1065 (6th Cir. 1983).

From these orders petitioner submits this PETITION FOR WRIT OF CERTIORARI.

**Reasons for Granting Certiorari**

The petitioner will attempt to show in accord with rule 17.1 (a), Rules of The United States Supreme Court, that: (1) the appellate court has rendered a decision in conflict with another federal appellate court on the same matter; (2) has for departed from the accepted and usual course of judicial proceedings that calls for supervision of this Most Honorable Court; and (3) has grossly departed from the teachings of this Most Honorable Court.

This case presents some important questions regarding *sua sponte* assertions by an appellate court which this court had not dealt with previously. Neither these assertions nor the manner in which they were applied are in accord with prior decisions of this court nor the Federal Rules of Civil Procedure.

This petition, below, will deal with the questions previously stated in the chronological order in which they were stated above.

It is imperative, at the outset, for this court to note that none of the allegations in the complaint are denied and are, therefore, to be taken as true. 28 U.S.C. Fed. R. Civ. P. 8(d); *Estelle v. Gamble,* 429 U.S. 97; *Westlake v. Lucas,* 537 F.2d 857 (6th Cir. 1976); *U.S. for Use of Automatic Sprinkler Corp. of America v. Merritt - Chapman & Scott Corp.,* 305 F.2d, 121 (3rd Cir. 1962).

I. As to allegations in the complaint which would toll the statute of limitations, the following provisions are expressly stated: (1) deceitful concealment; (2) conspiracy; (3) continuing violations of petitioner's civil rights; (4) the fact that the property is (was) in

*custodia legis.* Since 42 U.S.C. § 1983 provides no statute of limitations the courts are instructed to apply the statute of limitations and coordinate tolling rules of the state wherein the cause of action arose. *Board of Regents v. Tomanio,* 446 U.S. 478; *Johnson v. Railway Express Agency, Inc.* 421 U.S. 454. This Court, further, expressly stated that the "borrowing" effect is to include tolling rules of the state unless they are "inconsistent" with federal law. *Board of Regents v. Tomanio, supra,* pp. 483-486.

Tennessee rules are plain that statutes of limitations should be tolled for deceitful concealments, conspiracies, continuing torts, and when property is in *custodia legis.* The Sixth Circuit Court of Appeals, also, has adopted the rule that limitation should be tolled according to the rules set forth by the respective states. *See, e.g., Kenny v. Killian,* 232 F.2d 288, (6th Cir. 1955), cert. den. 352 U.S. 855. For Tennessee rules that establish that statutes of limitation should be tolled for the various reasons mentioned above see: (1) for deceitful concealment, *Hall v. DeSaussure,* 41 Tenn. App. 572 (1956); *Howell v. Davis,* 43 Tenn. App. 52, 306 S.W. 2d 9 (1957); *Ray v. Schiebert,* 224 Tenn. 99, 450 S.W. 2d 578 (1969); (2) for continuing violations, *Spence v. Cocke County,* 457 S.W. 2d 270, (Tenn. App. 1970), *Goodall v. Sartain,* 141 F. 2d 427 (1944) cert. den. 323 U.S. 709; (3) for conspiracies (continuing), *Emerson v. Machamer, 431 S.W. 2d 283 (1968); for property in custodia legis, Moore v. Crockett,* 29 Tenn. 365, 367 (1849), *State v. Bank of Tennessee,* 64 Tenn. 101, 107 (1875), *Gold v. Bush,* 63 Tenn. 579, 581-582 (1874), *Tyner v. Fenner,* 72 Tenn. 469, 476-480 (1880); *U.S. Fidelity & Guaranty Co. v. Rainey,* 113 S.W. 409 (S. Ct. Tenn. 1908), *Epperson v. Robertson,* 195 S.W. 230, 232 (S. Ct. Tenn. 1892), *Barnes v. Fort, et.al.,* 181 S.W. 2d 881, 886 (S. Ct. Tenn. 1944), *Hankins v. Waddell,* 167 S.W. 2d 694, 696.

Each of these provisions for tolling are alleged in the complaint and are undenied and must be assumed to be true. (citations, supra).

In the *BRIEF OF DEFENDANTS-APPELLES*, respondents continually attempted to mislead the appellate court by avering that the COMPLAINT stated a cause of action for conversion, only. It is the position of the petitioner that the complaint expressly states causes of action for: (1) unlawful warrantless search; (2) unlawful warrantless seizure; (3) deceitful concealment; (4) wrongful continuing impoundment of seized property; (5) conspiracy (under color of law); (6) continuing deprivation; (7) worngful sale; (8) conversion. Petitioner, also, submits that respondents addressed at least some of these wrongs that would, under Tennessee law, toll the statute of limitations but still maintain that the statute began to run at the instant of the seizure.

Statutes of limitations are to be construed liberally in favor of the party opposing dismissal. *Privett v. West Tenn. Power and Light Co.* 19 F. Supp. 812 (W.D. Tenn. 1937) affirmed 103 F. 2d (6th Cir. 1939). Petitioner will admit that liberal construments can take on ambiguous applications. However, viewing the complaint's allegations as true and undenied; the application of the tolling rules should effectively toll the statutes with "absolute" application. The complaint properly alleges the property was in custody of the law. No liberal application is needed to toll the statute in such a situation. It either is tolled or it is not tolled. The respondents expressly admit that the property was in custody of the law in their BRIEF OF DEFENDANTS-APPELLES. An inferrance can be gleaned that the property was in the custody of the law from the respondents admitting the property was seized. If it was not in the custody of the law then there was another deceitful concealment which should toll the statute because this is the state of custody

that respondents stated to petitioner, repeatedly. *See also, In Re Carlton, supra,* at 204. This report was written by the Honorable George C. Paine, III. from testimony of the respondents.

At the district court level Judge John T. Nixon in his *Memorandum and Order* stated, *sua sponte,* that the statute of limitations may be subject to some form of equitable tolling. Judge Nixon made this statement solely from reading the *Complaint.* The appellate court in its Order of November 29, 1983 recognized a concealment that should toll the statute. The appellate order stated, "Plaintiff claims that his suit is not time-barred, however, *because the defendants fraudlently concealed from him the true location of his livestock. (Appendix* A-5) (emphasis supplied). Upon directing their attention to this statement confirming their recognition of this concealment the appellate court changed theories of dismissal, *sua sponte,* changed reasons for affirming the dismissal and did not address the statute of limitations question any further. This can by no means be considered a liberal application.

The appellate court departed from the teachings of this court in *Board of Regents v. Tomanio, supra, Estelle v. Gamble, supra,* and *Conley v. Gibson,* 355 U.S. 41. The appellate court, also, departed from its prior holding in *Westlake v. Lucas, supra; Gordon v. City of Warren,* 579 F. 2d 388 (6th Cir. 1978); *Foster v. City of Detroit,* 405 F. 2d 138 (6th Cir. 1968); *Hanna v. Drobnick,* 514 F. 2d 393 (6th cir. 1975); *Marlowe v. Fisher Body,* 489 F. 2d 1057 (6th Cir. 1973). The failure to implement tolling rules under similar conditions is also in contrast with decisions of other circuits. *cf., e.g., Briley v. State of California,* 564 F. 2d 849 (9th cir. 1977); *Smith v. Nixon,* 606 F. 2d 1183 (D.C. Cir. 1979); *Williams v. Borden, Inc.* 637 F. 2d 731 (10th Cir. 1980).

This Most Honorable Court, long ago, stated its position regarding tolling when fraud is involved in **Holmberg v. Armbrecht**, 327 U.S. 392, 396, 397 (1946). This Court held:

> "Equity will not lend itself to such fraud and historically has received from it. It bars a defendant from setting up such a fraudulent defense, as it interposes against other forms of fraud. And so this Court long ago adopted as its own the old chancery rule that where a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party."

In view of the above the petitioner submits that the court below did not properly apply tolling rules to the instant case.

*It is the petitioner's position that the remaining questions should not be addressed by this Court in light of its prior decisions in California v. Taylor, 353 U.S. 553, 557, n. 2.; United States v. Santana, 427 U.S. 38 n. 2.; United States v. Ortiz, 422 U.S. 891, 898; Ramsey v. United Mine Workers, 401 U.S. 302, 312; Neely v. Eby Construction Co.; 386 U.S. 317, 330; Lauen v. United States, 355 U.S. 339, 362 n. 16, which hold that issues not urged nor briefed below will not be considered.*

II. Beginning at the stage of the Order denying the petition for rehearing the court below, *sua sponte*, incorporated into its reasons for affirming the motion to dismiss that the petition was barred from further asserting his claims by the doctrines of *res judicata* and *collateral estoppel*. These affirmative defenses are not previously asserted, raised, or even mentioned anywhere previously in the entire record.

28 U.S.C., Fed. Rules Civ. Pro. Rule 8(c) states:

> "(C) Affirmative Defenses. In pleading to a preceeding pleading, *a party shall set forth affirmatively* accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, *estoppel*, failure of consideration, fraud, illegality, injury by fellow servant, laches, liscense, payment, release, *res judicata*, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation."

The Sixth Circuit cited 6 cases in their Order of April 4, 1984 as precedents for their raising and applying the defenses of *res judicata* and *estoppel*. Petitioner ask this court to take notice of the fact that in *every* one of these cases the defense was raised in the court below and, from reading the cases, the defenses were evidently affirmatively pleaded.

The court below stated in its Order of February 10, 1984 that, "In addition, it appears from reading the bankruptcy decision of *In Re Carlton*, 26 B.R. 202 (M.D. Tenn. 1982). that this plaintiff has already sued in a Tennessee state court and has obtained a judgment against the sheriff's brother-in-law, Larry

Carlton, which awarded plaintiff the value of the animals in the amount of $42,100.00" *In Re Carlton, supra,* then seems to be the source of information from which the court of appeals, incorrectly, gleaned its information that the instant case was baned by the doctrines of *res judicata* and *collateral estoppel.*

*The appellate court below cited Allen v. McCurry,* 449 U.S. 90 (1981) as authority for attributing the "preclusive" effect to the instant case. Petitioner is in complete agreement that *Allen v. McCurry* does preclude a plaintiff from relitigating in a federal court an issue that has been previously decided in a state court. However, *In Re Carlton, supra,* 204, plainly states, "Gribble appealed this judgment to the Circuit Court of Rutherford County and filed a counter-complaint seeking damages for loss profits, negligence and breach of a bailment contract." *In Re Carlton, supra,* 204, also, gives the date of this trial as being December 6, 1977. Throughout all of this trial, and upward until November 20, 1981 respondents continually represented to the petitioner that his property was in the custody of The Rutherford County Sheriff's Department. This is alleged in the complaint and undenied and, therefore, must be assumed to be true. *(citations supra).*

Had these representations been true and had petitioner filed suit including all the causes of action alleged in the instant case prior to what was discovered on November 20, 1981; petitioner could have laid himself liable for abuse of civil process. *In Re Carlton, supra,* confirms that November 20, 1981 was the first date petitioner learned of the true identity of his property. This is alleged in the complaint, undenied and, therefore, must be assumed to be true.

The respondents all represented by very competent and capable counsel, and in addition respondent Buckner being a lawyer and judge, had no idea that the defense of either *res judicata* or *collateral estoppel*

were appropriate as defenses or else they would have asserted these defenses in their motion to dismiss.

Reviewing *In Re Carlton, supra*, 204, the counter-complaint is said to have asserted "damages for lost profits, negligence and breach of a bailment contract." This parent suit was tried on December 6, 1977. Lost profits up until that time would only include a very small portion of the damages included in the instant suit. The breach of the bailment contract and negligence was for a very valuable colt that respondent Carlton had let die due to feeding it a toxic synthetic nitrogen supplement which horses cannot digest. *(See Appendix* A-13, A-14).

The parent suit also awarded damages for lost profits for the period of time from April 10, 1974 until December 6, 1977 and only respondent Carlton was a party to the suit tried December 6, 1977. The other respondents were not even mentioned or named in the December, 1977 suit. Had the other respondents been parties to the parent suit, or privies, the trial judge would have joined them in such capacity under Rule 19.01 Tenn. Rules of Civil Pro. Had the respondents other than Carlton have been known to have been involved to the extent that was discovered on November 20, 1981, petitioner would have made them parties to the 1977 suit. It was their concealment, deceit, misrepresentation, and their actions under color of law that kept petitioner from knowing the true status and location and hidden sale of his property. This sale and final deprivation was done without any form of due process either prior to or after the seizure of the property. This Court has repeatedly held that due process involves some form of either pre-seizure or post-seizure hearing before a final termination of a property right. *Lynch v. Household Finance Corp.*, 405 U.S. 543; *Mitchell v. W. T. Grant Co.*, 416 U.S. 600; *Paul v. Davis*, 424 U.S. 693; *Bell v. Burson*, 402 U.S. 535; *Snidach v. Family Finance Corp.*, 395 U.S.

337; *Mullane v. Central Hanover Bank and Trust Co.* 339 U.S. 306; *Logan v. Zimmerman Brush Company et.al.,* 455 U.S. 422. No form of a processory hearing has been granted despite numerous requests.

This Court in *Kremer v. Chemical Const. Corp.,* 456 U.S. 461, held that when, as here, a federal court is asked to give preclusive effect to a prior state court judgment the court is to give the same effect as the state from which the parent suit emerged would give. In *Lee v. Winston,* 717 F. 2d 888, 894 (4th Cir. 1983) the Fourth Circuit Court of Appeals in applying *res judicata* and *estoppel* from a Virginia state court said, "If the Virginia courts would not give it preclusive effect, we in turn have no obligation to do so; if they would, we must."

Tennessee law is plain and contra to the Sixth Circuit in the determination and application of finality to a judgment. *Stidham v. Fickle Heirs,* 643 S.W. 2d 324 (S. Ct. Tenn. 1982), footnote 1, p. 325 conclusively states that Tenn. Rules of Civ. Pro. Rule 54.02 governs the application as is needed in the instant case.

Rule 54.02 requires that when more than one claim for relief is stated and more than one party is involved, in order for the preclusive effect to be invoked, their must be an *entry of judgment* precluding further litigation of the issues or parties to apply *res judicata* or *estoppel.* This, entry of judgment must be "express" on the judgment to preclude either relitigation of either part of a claim or one or any of the multiple parties. Since, *In Re Carlton, supra,* is the only evidence that was before the appellate court then it is evident from *In Re Carlton, supra,* that the instant claim is not borrowed by *res judicata* nor *estoppel.* There was no such entry of judgment in the parent suit. *(See Appendix* A-15). (This is the only entry of judgment in the parent suit). It is also evident from

*Allen v. McCurry, supra,* that the "full and fair "litigation of all the issues and parties were not litigated in the parent suit. Infrequently, as here, Civil Rights cases involve complicated issues with numerous causes of action and multiple parties. The constitutional issues involved here were not touched upon in the state suit. Therefore, *res judicata* and *estoppel* are not applicable in suits such as the instant. *Watts v. Graves,* 720 F. 2d 1416 (5th Cir. 1983); *Wilson v. Steinhoff,* 718 F. 2d 550 (2nd Cir. 1983); *Chavey v. Morris,* 566 F. supp. 359 (D.C. Utah 1983).

The court of appeals neither appropriately raised nor applied the doctrines of *res judicata* and *estoppel* in accord with *Allen v. McCurry, supra; Kremer v. Chemical Const. Corp., supra;* 28 U.S.C. Fed. Rules Civ. Pro. Rules 8(c), 12(g); Tenn. Rules Civ. Pro. Rule 54.02; *Stidham v. Fickle Heirs, supra.*

III. The court of appeals in its Order of April 4, 1984 held that the instant claim failed to state a cause of action because Tennessee law provides a common law remedy. The appellate court cited as authority for this holding *Parrott v. Taylor,* 451 U.S. 527; *Vicory v. Walton,* 721 F. 2d 1062 (6th Cir. 1983). The appellate court, in construing *Parrott* on the two previous occasions which *Parrott* has been addressed by the Sixth Circuit in regard to Tennessee law has held that Tennessee law does not provide a remedy for intentional actions. The same intentional acts for which T.C.A. § 9-8-207 expressly disallows any relief are set forth in the complaint. In *Wilkerson v. Johnson* 699 F. 2d 235 (6th Cir. 1983) and *Dunn v. State of Tenn.,* 697 F. 2d 121 (6th Cir. 1982), the Sixth Circuit held that T.C.A. § 9-8-207 does not provide a remedy for intentional acts but allowed recovery for non-intentional acts. So what the Sixth Circuit is telling the instant petitioner is that he is forced to rely upon a remedy which the Sixth Circuit has previously held does not exist. At

first blush this seems to be a difficult task but upon thorough evaluation it is evident that this is literally impossible.

The appellate court applied *Vicory v. Walton, supra,* to hold that Tennessee provides a common law remedy for which petitioner can seek redress. Petitioner, respectfully, ask this Most Honorable Court to expressly over-rule this holding and not apply it to this case for the following reasons: (1) *Vicory v. Walton, supra,* was decided on Nov. 30, 1983; this case was filed on November 19, 1982. The holding would, therefore, of necessity have to be applied retrospectively. (2) *Vicory v. Walton,* holding that a state common remedy is sufficient to redress a Civil Rights claim is contra to this Courts decision of *Logan v. Zimmerman Brush Company, et.al., supra.*

The holding in *Vicory v. Walton, supra,* in addition to being contra to *Logan v. Zimmerman Brush Co. et.al.,* would have the literal effect, in application, of destroying all Civil Rights Actions where states provide common law tort remedies. All states provide common law tort remedies at least for some torts. From reading the legislative history of 1983 in *Lynch v. Household Finance, Corp., supra, and Parrott v. Taylor, supra,* it is the petitioner's position that this is greatly opposed to the legislature intent of § 1983 expounded in those cases. The purpose of §1983 was to establish a distinct remedy from ordinary torts and torts committed under color of law. None of the cases cited by the Sixth Circuit in its final order involved wrongs committed under color of law.

*Parrott v. Taylor, supra,* construed the state remedy in light of the Nebraska Tort Claims Act and the defense that the state provided this remedy was raised by the defendants in the suit at the district level. The Nebraska remedy construed and applied was adequate for the wrong complained of. Such is not true in the instant case.

The appellate court below in its Order of April 4, 1984 confirms that Tennessee does not provide a remedy for acts of malice, fraud, or corruption and states that petitioners reliance upon *Wilkerson v. Johnson* is "misplaced." Petitioner respectfully submits that if his reliance is misplaced it should have, also, been misplaced in *Wilkerson*. The complaint in the instant case also alleges acts of malice, fraud, and corruption.

Finally the appellate court below erred in holding that the complaint failed to state a cause of action. This 12(b) (6) defense had been previously waived by the respondents and was neither urged nor briefed below. Petitioner's due process guarantees were violated by the appellate court since petitioner was not allowed to brief the issue nor amend his complaint. *Griggs v. Hinds Junior College*, 563 F. 2d 179 (5th Cir. 1977); *Sarter v. Mays*, 491 F. 2d 675 (11th Cir. 1974); *Lone Star Motor Import, Inc. v. Citrogen Cars Corp.* 288 F. 2d 69 (5th Cir. 1961).

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## CONCLUSIONS

The fact that the only issue properly before the court of appeals was the statute of limitations question and because tolling rules were not applied as taught by this Court to the limitations issue; the other defenses supplied *sua sponte* should not be considered. The issues *sua sponte* asserted were neither properly raised nor applied. The court of appeals by asserting the issues of *res judicata, estoppel, and failure to state a claim* departed from its role as an adjudicative body and assumed the role of an attorney for respondents. The appellate court abandoned the only issue that was properly before the court and on two later occasions asserted defense and technical procedures that were not applicable to the present case in procedure or fact.

Decisions are infinite that hold technicalities are not to override the ends of justice in any case.

Petitioner in his motion to correct erroneous conclusions of material facts and ammend accordingly requested that the court of appeals remand or accept supplementation of the record regarding the issues of *res judicata and estoppel.* This could not prejudice either party but the request was refused. Equity, in light of the decisions and rules above, requires one a full and fair chance to submit evidence to defenses asserted to a claim. Had these or any other defenses been asserted at the trial level such a request would not have demanded such equitable relief.

**Petitioner request that this Most Honorable of Courts summarily remand this case to trial or grant certiorari. Alternatively, Petitioner requests that this Court allow admission of further court records if this Court is not fully convinced that these defenses have been wrongfully raised and applied.**

**Petitioner comes to this Court with totally clean hands having been deprived of his only source of livelihood without any due process of law.**

## APPENDIX

**UNITED STATES DISTRICT COURT**
Middle District of Tennessee
800 United States Courthouse
Nashville, Tennessee 37203
Office of the Clerk (615) 251-7178

Date: 1-18-83

---

RE: GRIBBLE vs. BUCKNER
82-3984

---

Enclosed is a conformed copy of the following:

Memorandum and Order entered 1-17-83 in the above styled civil action.

JULIA B. CROSS, Clerk
By Barbara Vaughn
Deputy Clerk

enclosure

cc:
Larry Gribble
William Billips

Case Notice No. 2

**IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION**

---

LARRY E. GRIBBLE

vs.

HONORABLE JAMES W. BUCKNER, JUDGE, GENERAL SESSIONS COURT OF RUTHERFORD COUNTY, TENNESSEE ET AL

---

NO. 82-3984

Received for Entry
10:30 a.m.
January 17, 1983
Julia B. Cross
Clerk
By B. Vaughn
Deputy Clerk

---

*MEMORANDUM AND ORDER*

The plaintiff Larry E. Gribble, brings this 42 U.S.C. § 1983 *pro se* action to recover certain personal property. The plaintiff specifically alleges that the defendants seized and converted to their use, under color of state law, a group of registered Charolais cattle and a group of registered Tennessee Walking Horses. The case pends on the defendants' motion to dismiss. The defendants argue that the statute of limitations bars this action and that the plaintiff has no cause of action

under § 1983 for unlawful detention of personal property. For the reasons stated, the motion will be granted.

Without deciding the defendants' first ground for dismissal based on the applicable statute of limitations, which may be subject to the doctrine of equitable tolling, this Court recognizes that § 1983 does not include a cause of action for deprivation of personal property. In *Kimble* v. *Department of Corrections, State of Michigan,* 411 F. 2d 990 (6th Cir. 1969), the Court of Appeals affirmed the district court's dismissal of a § 1983 *pro se* prisoner complaint, which sought return of personal property. Other courts concur in this view. *Rhodes* v *Sigler,* 448 F.2d 1237 (8th Cir. 1971); *Carter* v. *Chief of Police,* 437 F.2d 413 (3rd Cir. 1971); *Boyles* v. *Fox,* 403 F.Supp. 253 (E.D. Tenn. 1975). Accordingly, in this Court's judgment, the plaintiff's claim for recovery of his personal property is not cognizable under § 1983 and his complaint must be dismissed.

Therefore, it is ORDERED that the defendants' motion to dismiss is granted and this case is DISMISSED.

Entered this the 17th day of January, 1983.

John T. Nixon
United States District Judge

## ORDER

LARRY E. GRIBBLE,
*Plaintiff-Appellant,*

Filed Nov. 29, 1983
John P. Hehman, Clerk

v.

JAMES W. BUCKNER, JUDGE, GENERAL SESSIONS COURT OF RUTHERFORD COUNTY, TENNESSEE: ROBERT GOODWIN, FORMER SHERIFF OF RUTHERFORD COUNTY, TENNESSEE; CRAIG SNELL, SHERIFF RUTHERFORD COUNTY, TENNESSEE; RANDY GALLOWAY, FORMER DEPUTY SHERIFF OF RUTHERFORD COUNTY, TENNESSEE; LARRY W. CAROLTON, SPECIAL DEPUTY OF RUTHERFORD COUNTY, TENNESSEE,
*Defendant-Appellees.*

BEFORE: LIVELY, Chief Judge; and EDWARDS and JONES, Circuit Judges

This pro se plaintiff from McMinnville, Tennessee, appeals from a district court judgment dismissing his civil rights complaint filed under 42 U.S.C. § 1983. Plaintiff alleged that the defendants collectively conspired and illegally seized from him, and converted to their own use, a group of registered Charolais cattle and a group of registered Tennessee Walking Horses. The district court granted the defendants' motion to dismiss upon concluding that § 1983 did not encompass a cause of action for deprivation of personal property.

Accepting as true the facts as alleged in plaintiff's complaint, *Westlake* v. *Lucas,* 537 F.2nd 857, 858 (6th Cir. 1976), this Court concludes that the plaintiff's complaint was properly dismissed because it was

time-barred by the applicable Tennessee state statute of limitations.

There is no dispute between the parties, and it is indeed well settled, that the one year time period contained in T.C.A. § 28-3-104 (a) for bringing a personal tort action is to be applied to determine the timeliness of bringing civil rights complaints against Tennessee defendants in this Circuit. *Wright* v. *State of Tenn.*, 628 F.2d 949, 951 (6th Cir. 1980) *(en banc)*. In this case, the plaintiff filed his complaint in the district court on November 19, 1982; and yet, the plaintiff states in his complaint that the seizure of his livestock occurred on or about April 10, 1974. Plaintiff claims that his suit is not time-barred, however, because the defendants fraduently concealed from him the true location of his livestock.

Under Tennessee law, a statute of limitations may indeed be tolled if a plaintiff's cause of action is fraudently concealed from him; however, it will not be tolled if the plaintiff was put on reasonable inquiry or notice of facts which would have altered him of his potential claim. *Phillips* v. *Phillips*, 526 S.W.2d 439 (Tenn. 1975); *Clark v. American National Bank & Trust Co., ETC.*, 531 S.W.2d 563, 573 (Tenn. App. 1974). Certainly, if the plaintiff knew or negligently failed to discover his potential claim, the statute of limitations is not tolled. *Ray* v. *Scheibert*, 450 S.W.2d 578, 581 (Tenn. 1969); *Stone* v. *Hines*, 541 S.W. 2d 598, 599 (Tenn. App. 1976); *accord, Ocean Acres LTD.* v. *Dare County Bd. of Health*, 707 F.2d 103, 105 (4th Cir. 1983); *Wood* v. *South Barbara Chamber of Commerce, Inc.*, 705 F.2d 1515, 1521 (9th Cir. 1983).

In the instant case, it is clear that the one year statute of limitations was not tolled because the facts as alleged by this plaintiff show that he was cognizant of his potential claim against these defendants eight years before he filed his complaint. Plaintiff states

very plainly in his complaint that he has been searching for his livestock since the date of the alleged illegal seizure. In the last sentence of paragraph seven of his complaint, the plaintiff admits that prior to his learning of the sale of his livestock, he thought his livestock was still in possession of the sheriff's department. Plaintiff seems to think that his cause of action accrued when his livestock was sold. It is apt to note the Supreme Court's observation in *Delaware State College* v. *Ricks*, 449 U.S. 250, 258 (1980), that a cause of action accrues when the illegal act occurs and not when the consequences of the act become painful. Upon careful review of all the circumstances in this cause, this Court concludes that the plaintiff either knew or reasonably should have known that he had a potential claim against these defendants at the time of the alleged illegal seizure of his livestock. His complaint was, therefore, time-barred by the applicable Tennessee state statute of limitations.

This panel unanimously agrees that oral argument is not necessary in this appeal. Rule 34(a), Federal Rules of Appellate Procedure. The district court's judgment dismissing plaintiff's complaint is, accordingly, affirmed for the aforementioned reasons pursuant to Rule 9(d)3, Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
John P. Hehman, Clerk

No. 83-5119
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb. 10, 1984
John P. Hehman, Clerk

ORDER

---

LARRY E. GRIBBLE
*Plaintiff-Appellant*

v.

JAMES W. BUCKNER, JUDGE, GENERAL SESSIONS COURT OF RUTHERFORD COUNTY, TENNESSEE; ROBERT GOODWIN, FORMER SHERIFF OF RUTHERFORD COUNTY, TENNESSEE; CRAIG SNELL, SHERIFF RUTHERFORD COUNTY, TENNESSEE; RANDY GALLOWAY, FORMER DEPUTY SHERIFF OF RUTHERFORD COUNTY, TENNESSEE; LARRY W. CAROLTON, SPECIAL DEPUTY OF RUTHERFORD COUNTY, TENNESSEE,
*Defendants-Appellees*

---

BEFORE: LIVELY, Chief Judge; and EDWARDS and JONES, Circuit Judges

This matter is before the Court on the plaintiff's motion for reconsideration *en banc* in the above styled case. A majority of the Court having not voted in favor of *en banc* reconsideration, the plaintiff's motion has been referred to the panel which originally considered the appeal.

Even if it were liberally assumed that the applicable statute of limitations was tolled under the doctrine of *custodia legis* or by one of the plaintiff's other arguments, this Court concludes that the district court's judgment must still be affirmed for the following reasons.

Seeking monetary relief and the return of his livestock under 42 U.S.C. § 1983, plaintiff alleged that his animals were illegally seized and converted under color of state law in violation of his due process rights and in violation of Tennessee law. This claim, however, fails to state a cause of action under the federal constitution for deprivation of property in violation of due process because the plaintiff can seek redress for his alleged wrong in the Tennessee state courts by filing a state tort action for wrongful conversion of personal property. *Parrott v. Taylor,* 451 U.S. 527 (1981). Plaintiff has not alleged, and it does not otherwise appear, that this state remedy is insufficient to satisfy due process requirements.

In addition, it appears from reading the bankruptcy decision of *In Re Carlton,* 26 B.R. 202 (M.D. Tenn. 1982), that this plaintiff has already sued in a Tennessee state court and has obtained a judgment against the sheriff's brother-in-law, Larry Carlton, which awarded plaintiff the value of the animals in the amount of $42,100.00. In light of the state court judgment, it is apparent that the plaintiff is also barred under the doctrines of res judicata and collateral estoppel from seeking additional relief from the brother-in-law and the other defendants in this suit. *Allen* v. *McCurry,* 449 U.S. 90 (1981).

Accordingly, it is ORDERED that the motion for reconsideration be and hereby is denied.

ENTERED BY ORDER OF THE COURT
John P. Hehman, Clerk

**UNITED STATES COURT OF APPEALS**
**FOR THE SIXTH CIRCUIT**

FILED
April 4, 1984
John P. Hehman, Clerk

**ORDER**

---

LARRY E. GRIBBLE,
*Plaintiff-Appellant,*

v.

JAMES W. BUCKNER, JUDGE, GENERAL SESSIONS COURT OF RUTHERFORD COUNTY, TENNESSEE; ROBERT GOODWIN, FORMER SHERIFF OF RUTHERFORD COUNTY, TENNESSEE; CRAIG SNELL, SHERIFF RUTHERFORD COUNTY, TENNESSEE; RANDY GALLOWAY, FORMER DEPUTY SHERIFF OF RUTHERFORD COUNTY, TENNESSEE; LARRY W. CAROLTON, SPECIAL DEPUTY OF RUTHERFORD COUNTY, TENNESSEE,
*Defendants-Appellees*

---

BEFORE: LIVELY, Chief Judge; and EDWARDS and JONES, Circuit Judges

This cause is once again before the Court to now consider plaintiff's motion to correct and amend its previous order of February 10, 1984 denying plaintiff's motion to reconsider, with a suggestion for rehearing en banc, an earlier order filed on November 29, 1983 which had affirmed the district court's judgment dismissing plaintiff's § 1983 civil rights complaint.

Upon carefully considering all of the arguments raised in plaintiff's motion, this court concludes that it did not overlook or misapprehend any facts or points of law when it denied the plantiff's motion to reconsider and when it affirmed the district court's judgment. Although this plaintiff was named as a defendant in a state court action brought by one of the defendants in this action, the plaintiff filed a counterclaim against the state plaintiff for lost profits, negligence and breach of a bailment contract based on the same principal facts as are alleged in the instant suit. The countersuit eventually resulted in the instant plaintiff receiving a judgment for $42,100.00. Although the plaintiff may not have been able to collect on this judgment, the judgment was, nevertheless, entered on the merits of his claims. Contrary to the plaintiff's arguments, the doctrines of res judicata and collateral estoppel do attach to a judgment entered on a counterclaim to bar further litigation of the subject matter. *City of Parma, Ohio* v. *Levi*, 536 F.2d 133 (6th Cir. 1976). Under these doctrines, the parties and their privies are barred from relitigating in a subsequent action matters which were raised and which could have been raised regarding the subject matter in the prior action. See *Nathan* v. *Rowan*, 651 F.2d 1223, 1226 (6th Cir. 1981), and cases cited therein. A later suit is barred even though a different legal theory of recovery is advanced in the second suit. *Harrington* v. *Vandalia-Butler Bd. of Ed.*, 649 F.2d 434, 437 (6th Cir. 1981); *Cemer* v. *Marathon Oil Company*, 583 F.2d 830, 832 (6th Cir. 1978). Privity existed among the defendants as plaintiff alleges that the defendants conspired and acted in concert to deprive him of his animals. They, therefore, had a sufficient legal interest that was dependent wholly or in part on the outcome of the state lawsuit. *Vulcan, Inc.*, v. *Fordess Corp.*, 658 F.2d 1106, 1109-1110 (6th Cir. 1981). Finally, on this point, the Court properly invok-

ed these doctrines for the first time on appeal as a court of appeals may always affirm a district court judgment for additional reasons than those given by the district court. *Brown* v. *Allen*, 344 U.S. 443, 459 (1953); *Herm* v. *Stafford*, 663 F.2d 669, 684 (6th Cir. 1981); *City of Cleveland* v. *Cleveland Aluminating Co.*, 570 F.2d 123, 128 (6th Cir. 1978).

Finally, plantiff argues that his suit should not have been dismissed under *Parrott* v. *Taylor*, 451 U.S. 527 (1981) because the Sixth Circuit ruled in *Wilkerson* v. *Johnson*, 699 F.2d 325, 329 (6th Cir. 1983) that the State of Tennessee does not provide an adequate remedy for someone claiming deprivation of property without due process. Plaintiff's reliance on this case is misplaced. This Court did state in *Wilkerson* that the plaintiffs were not required to submit their claims to the Tennessee Board of Claims under T.C.A. § 9-8-207 because the statute provided a remedy for injuries based only upon the negligence of state officials and it excluded the remedy for injuries resulting from fraud, malice or corruption of the official. The Court, therefore, concluded that the state did not provide a remedy for the type of injury suffered by the barbershop applicants.

In sharp contradistinction to the circumstances presented in *Wilkerson*, the instant plaintiff does have a well-recognized common law remedy to compensate him for the alleged wrongful conversion of his animals. The State of Tennessee clearly permits an injured party to bring a suit for wrongful conversion, replevin or detinue to compensate him for the wrongful withholding and conversion of property. *Law v. Dewoskin*, 447 S.W. 2d 361 (1969); *Jack Strader Tire Co. v. Manufacturers Acceptance Corp.*, 429 S.W. 2d 428 (1968); *Swan v. Williams*, 330 S.W. 2d 557 (1959). The Tennessee Supreme Court stated in *Jack Strader Tire Co. v. Manufacturers Acceptance Corp., supra*, 429 S.W. 2d at 429-430, that:

> It has been seen that where the wrong consists of unlawfully withholding the possession of personal property, the action of replevin or detinue may be brought by the injured party. In such a case the injured party may elect to pursue either of those forms, or he may elect to sue in trover, in which action the plaintiff does not seek to recover the property at all, but only the damages for the conversion of it. The value of the property withheld by the defendant *at the time of conversion* is the measure of damages in the action, as a general rule. (original emphasis).

Furthermore, the Sixth Circuit has expressly ruled that these types of common law remedies are sufficient to satisfy the requirements of due process even if they do not provide the full relief that is available under 42 U.S.C. § 1983. *Vicory v. Walton*, 721 F.2d 1062, 1064-1065 (6th Cir. 1983).

The plaintiff's motion is, accordingly, denied.

ENTERED BY ORDER OF THE COURT
John P. Hehman, Clerk

FILED
April 15, 1974
Robert J. Suddarth, Clerk

IN THE CIRCUIT COURT FOR RUTHERFORD COUNTY AT MURFREESBORO, TENNESSEE

LARRY CARLTON

vs.

LARRY GRIBBLE

NO. 9223

## CROSS-COMPLAINT

Comes the defendant, Larry Gribble, and assumes the role of a cross-complainant, and sues Larry Carlton, and for cause of action, says:

I.

That Larry Carlton was negligent in permitting cross-complainant's colt to die. That said colt was sired by G.L.L.'s Carbon Copy, the 1964 World Grand Champion Walking Horse, and said colt's dam was Ann Last Chance, a full sister of Goldfinger, the World Champion two year old Walking Horse in 1965. That said colt had a reasonable fair market value of $10,000.00.

II.

That Larry Carlton was negligent in permitting a calf to die. That said calf had a reasonable fair market value of $300.00.

III.

Cross-complainant further alleges that he has been deprived of the use of four mares for a year. That he intended to raise colts from each mare, and his reasonable loss is $6,000.00.

IV.

Cross-complainant further alleges that he has been deprived of selling four yearling colts with a loss of $10,000.00.

V.

Cross-complainant further alleges that Larry Carlton has deprived him of the use of his cows. That they had a fair market value of $6,400.00 when they were illegally seized by Carlton, and now have a fair market value of $3,000.00. Thus, there is a loss of $3,400.00.

VI.

Cross-complainant further alleges that his cows were not bred and will not have calves. Therefore, he has been damaged another $4,000.00.

VII.

Cross-complainant states that cross-defendant, Carlton, illegally seized his cows and horses by taking them from his rented farm. That Carlton refused to permit cross-complainant to even see his animals. That he refused to turn said animals over to cross-complainant unless the outrageous pasture charge of $3.00 per day per animal was paid.

VIII.

Wherefore, cross-complainant sues the cross-defendant, Carlton, for both compensatory and punitive damages in the sum of $25,000.00, and demands a jury to try his cause.

William W. Burton,
Solicitor for Cross-complainant

FILED
May 12, 1978
Robert J. Suddarth, Clerk

IN THE CIRCUIT COURT FOR RUTHERFORD COUNTY AT MURFREESBORO, TENNESSEE

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LARRY CARLTON,
*Plaintiff and*
*Cross-Defendant*

vs. NO. 9223

LARRY GRIBBLE,
*Defendant and*
*Cross-Plaintiff*

---

## ORDER OF REMITTITUR

This matter came on to be heard on the 28th day of April, 1978, before the Honorable John Templeton, Chancellor, sitting by interchange, upon the Cross-Defendant's Motion for New Trial and Remittitur.

After hearing the argument of Counsel, examination of the record, the Court is of the opinion that the Jury verdict of $48,500.00 is unacceptable due to the fact that the Jury considered punitive damages which was not charged by the Court.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the verdict heretofore entered be reduced by a remittitur of $6,400.00 and the Court hereby approves Judgment on the verdict as reduced in the amount of $42,100.00. In all other things the verdict of the Jury remains unchanged and is hereby approved.

The Cross-Defendant, LARRY CARLTON, is hereby allowed thirty (30) days within which to prepare and file his appeal bond and ninety (90) days to prepare and file his Bill of Exceptions to the Court of Appeals in Nashville, Tennessee.

ENTER:

John Templeton, Chancellor

APPROVED FOR ENTRY:

John G. Mitchell, Jr. - Attorney for Larry Carlton

William Burton - Attorney for Larry Gribble

Minute Book 75, Page 490 - May 12, 1978

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT OF TENNESSEE**
**NASHVILLE DIVISION**

---

LARRY E. GRIBBLE,
*Plaintiff,*

No. 82-3984

vs.

THE HONORABLE JAMES W. BUCKNER, JUDGE, General Sessions Court of Rutherford County, Tennessee; et.al.
*Defendants.*

---

**MOTION**

Come now the defendants, and move the Court for an extension of time of thirty (30) days from December 14, 1982, up to and including January 12, 1983, within which to answer the Complaint filed against them for the reason that such time is necessary to investigate the allegations in the Complaint in order to appropriately answer. An Affidavit in support of said motion is attached hereto.

Respectfully submitted,
ORTALE, KELLEY, HERBERT & CRAWFORD
By: William M. Billips
23rd Floor, L. & C. Tower
Nashville, Tennessee 37219
(615) 256-9999

**CERTIFICATE OF SERVICE**

I do hereby certify that I have mailed a true and exact copy of the foregoing to Mr. Larry E. Gribble, Route 4, Box 440, McMinnville, Tennessee 37110 on this the 10th day of December, 1982.

William M. Billips

**UNITED STATES DISTRICT COURT**
**FOR THE MIDDLE DISTRICT OF TENNESSEE**
**NASHVILLE DIVISION**

---

LARRY E. GRIBBLE,
*Plaintiff,*

No. 82-308

vs.

HONORABLE JAMES W. BUCKNER,
JUDGE, General Sessions Court
of Rutherford County, Tennessee;
et.al.
*Defendants.*

---

## MOTION TO DISMISS

Come now the defendants, and move this Court to dismiss the actions that has been filed against them by the plaintiff for the following grounds:

1. The statute of limitations has run and bars the plaintiff's recovery.

2. The unlawful detention of ones chattels is not the sort of wrong to which the Civil Rights Act is applicable.

Respectfully submitted,
ORTALE, KELLEY, HERBERT & CRAWFORD
By: William M. Billips
23rd Floor, L. & C. Tower
Nashville, Tennessee 37219

## CERTIFICATE OF SERVICE

I do herby certify that I have mailed a true and exact copy of the foregoing to Mr. Larry A. Gribble, Route 4, Box 440, McMinnville, Tennessee 37110 on this the 30th day of December, 1982.

William M. Billips

## BRIEF OF DEFENDANTS-APPELLES

THE DEFENDANTS WILL ADMIT THAT THE DEPRIVATION OF A PROPERTY RIGHT IS ACTIONABLE PURSUANT TO 42 U.S.C.A. § 1983 and 28 U.S.C.A. § 1343 (3).

The law prior to *Lynch v. Household Finance Corporation*, 405 U.S. 543, 92 S. Ct. 1113, 31 L. Ed 2d 424 (1972) did make a distinction between "personal" rights and "property" rights. This distinction had arisen from what was felt to be a conflict between 28 U.S.C.A. § 1343 (3) and 28 U.S.C.A. § 1331. In the *Lynch* decision, the Supreme Court stated that this supposed conflict did not exist. The *Lynch* Court pointed out that § 1343 (3) applied only to cases where there was an infringment of rights "under the color of State Law" while § 1331 contained no such requirement and under § 1331 it was necessary to satisfy the amount-in-controversy requirement for federal jurisdiction. *Id.* at 1119.

In reaching its decision, the *Lynch* Court went into a lengthy discussion of the legislative history of § 1983 and § 1334 (3). Their origins were traced to the Civil Rights Act of 1866 and the Civil Rights Act of 1871. The Court referred to statements by the drafter of the act, remarks made by other members of Congress during debate, and to a message delivered by President Grant to the Congress urging passage of this legislation. All these statements made reference to the protection of property rights as well as personal rights. *Id* at 1117, 1118.

The Lynch Court felt that there were other reasons for eliminating the distinction. The Court pointed out that the Federal Courts were having a difficult time in cases which contained a mixture of personal property right questions. There was no clear objective distinction drawn between them. In reaching its decision, the Lynch Court stated:

"Such difficulties indicate that the dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth, a 'personal' right, whether the 'property' in question be a welfare check, a home, or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized." *Id.* at 1122.

Since the Lynch decision there have been numerous cases decided in which there was a deprivation of a property right question. Some of these cases include:

*North Georgia Finishing v. Di Chem,* 419 U.S. 601, 95 S. Ct. 719, 42 L. Ed. 2d 753 (1975),

*Turner v. Impala Motors,* 503, F. 2d 607 (6th Cir. 1974),

*Ferranti v. Moran,* 618 F. 2d 888 (1st Cir. 1980)

*Harris v. City of Rosenberg,* 664 F. 2d 1121 (9th Cir. 1981).